

THIRD DIVISION

[G.R. No. 179499, April 30, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TORIBIO JABINIAO, JR. AND JOHN DOE, ACCUSED-APPELLANTS.**

DECISION

CHICO-NAZARIO, J.:

This is an appeal from the Decision^[1] dated 19 July 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00334-MIN affirming with modification the Decision of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, finding appellant Toribio Jabiniao, Jr., guilty of the crime of Robbery with Homicide.

On 10 March 1999, an Amended Information was filed against appellant Jabiniao before the RTC of Cagayan de Oro City, charging him with the crime of Robbery with Homicide, penalized under Article 294 in relation to Article 14 of the Revised Penal Code, as amended by Republic Act No. 7659, allegedly committed as follows:

That on August 27, 1998 at about 1:00 o'clock dawn at Cugman, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another being both armed with handguns and with intent to gain and after entering without permission into the dwelling of the offended party Maria Divina Pasilang where she was sleeping together with her husband Ruben Pasilang and their minor children and by means of force, threat, intimidation and violence with the use of their handguns by pointing the same to the offended party and her husband who were awakened after they were kicked by co-accused Toribio Jabiniao, Jr., the accused demanded for their money and after finding it the accused did then and there willfully, unlawfully and feloniously, with intent to gain, take, rob and carry away the money of the offended party and her husband amounting to more or less P2,000.00 to their damage and prejudice which the couple intended to use for the hospitalization of their son who was then sick with dengue fever and thereafter before fleeing with the money, the herein accused, in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously, with evident premeditation, taking advantage of their superior number and strength and with intent to kill, by reason and on the occasion of the robbery, treacherously attack the victim Ruben Pasilang by shooting him with the use of their guns thereby inflicting a mortal gunshot wound on the victim which cause[d] his untimely death, to the great damage and prejudice of the offended party, the victim and his heirs.

That the commission of the crime was also attended by the aggravating

circumstance of nighttime purposely sought by the accused and by committing it inside the dwelling of the victim.

The killing of Ruben Pasilang is committed with the use of an unlicensed firearm.

Contrary to Article 294 in conjunction with Article 14 of the Revised Penal Code as amended by R.A. No. 7659.^[2]

Appellant Jabiniao was arraigned on 12 March 1999, wherein he pleaded "Not Guilty" to the charge. The other accused remains unidentified. Trial on the merits ensued.

The prosecution presented as its witnesses Maria Divina Pasilang, Ireneo Haclad, SPO1 Bladimer Fabre Agbalog, SPO4 Hilario Balensola, PO1 Fernando Edoria, Dr. Efren Celeste, Dawn Florendo, Atty. Eleuteria Algodon and Rolando Jabiniao.

Private complainant Maria Divina Pasilang testified that at around 1:00 a.m. of 27 August 1998, she and her husband, the deceased Ruben Pasilang, were sleeping in their house in Cugman, Cagayan de Oro City. They were awakened when Maria Divina felt someone kick her thighs. When she opened her eyes, she saw appellant Jabiniao, who was short and muscular, wearing a pair of short pants but without any shirt on, with a holster on his shoulder and a bonnet or ski mask on his face. He had a masked companion who stayed at the door outside their house, acting as a lookout. Appellant Jabiniao pointed his gun at Maria Divina and Ruben and demanded money from them. They were not able to say a word as they were both trembling in fear. Appellant Jabiniao ransacked the drawer for money and other belongings and took P2,000.00 and Maria Divina's shoulder bag. Appellant Jabiniao removed his mask, revealing his face.

Appellant Jabiniao approached Maria Divina, raised her *duster* and stroked her thighs. She mercifully begged not to be touched in exchange for all their belongings. Ruben likewise pleaded and told appellant Jabiniao that he could take all their things. Appellant Jabiniao, however, continued stroking Maria Divina's thigh. He then stood up and cut the wire of an electric fan which he used to tie Ruben's feet. Appellant Jabiniao then proceeded to tie Ruben's hands with the strap of Maria Divina's bag, but Ruben resisted and was able to free his hands from appellant Jabiniao's hold. Appellant Jabiniao ran towards the door. Ruben crawled and knelt towards the door and closed it. A few seconds later, gunshots were fired from the outside which pierced through the door, hitting the chest of Ruben. Maria Divina heard appellant Jabiniao and his masked companion pass through the gate and flee the area. Maria Divina went to Ruben and embraced him. Ruben said: "Mards, I am going to die because of the wound." She replied, "Do not succumb to the pain because you still have children who need your care." Maria Divina shouted for help. Her nearest neighbor, Nang Emie, answered: "We are afraid, Day, to help because of the gunfire." Ruben died in Maria Divina's arms.^[3]

Appellant Jabiniao was arrested on 14 September 1998. The following day, on 15 September 1998, policemen asked Maria Divina to identify her assailant. Maria Divina immediately identified appellant Jabiniao.

Maria Divina also testified that she misses her husband and was worried about the

future of her children. Ruben was earning P200.00 a day as a foreman of a building contractor. She spent P500.00 every night for ten days as wake expenses, P6,000.00 for the 9th day rites, and P1,000.00 for the 40th day rites. She also paid P1,800.00 for the coffin and P3,000.00 for the tomb.^[4]

Barangay Tanod Ireneo Haclad testified that on 14 September 1998, he accompanied the police officers who served the warrant of arrest on appellant. At around 3 p.m. of the same day, upon seeing the policemen, appellant tried to pull his gun but was deterred when one of the policemen fired two warning shots and ordered him to stop and drop his gun. A policeman then tackled and handcuffed him. The policemen retrieved from appellant a black bonnet or ski mask, a holster and a "paltik" .38 caliber gun with five bullets and one empty shell. SPO1 Bladimer Fabre Agbalog corroborated this account.

SPO4 Hilario Balensola Rosilla, Jr., senior police officer of the Firearms and Explosives Unit of the Philippine National Police, testified to his 9 March 1999 Certification that appellant was not among those included in the list of registered firearm holders, nor was he issued a permit to carry a firearm outside of residence.

PO1 Fernando Edoria, who was assigned to the Warrant and Subpoena Section and the Central Record Section of the PNP, Cagayan de Oro City, testified that his office issued a Certification dated 20 May 1999 stating that appellant Jabiniao has three criminal records, as follows: (1) Robbery with Homicide [CC Nr 98-953]; (2) Murder [CC Nr 96-374]; and (3) Illegal Possession of Firearms [CC Nr 96-10-40-96].

Dr. Efren Celeste, Medical Officer IV of the City Health Department of Cagayan de Oro City, issued a Death Certificate dated 1 September 1998 stating that Ruben's causes of death are the following:

CAUSES OF DEATH

Immediate Cause: a. Cardio Respiratory Arrest
Antecedent Cause: b. Hypovolemic Shock
Underlying Cause: c. Gunshot wound (L) chest^[5]

Social Security System employee Dawn Florendo testified that Maria Divina filed a funeral claim in said agency. Public Attorney's Office Officer-in-Charge Atty. Eleuteria Algodon testified that she subscribed to appellant Jabiniao's Counter-Affidavit wherein the latter declared that he owned the bonnet taken by the police officers, but used the same during harvest time to avoid scabies and for the cold weather at night.

Appellant Jabiniao's brother, Rolando Jabiniao, testified that appellant Jabiniao was not in his house on 26 August 1998 or within the vicinity of Mintugsok, Cugman. He did not know where appellant Jabiniao was when the crime was committed.

The defense, on the other hand, presented as its witnesses appellant Jabiniao himself, Leonardo Gacang and Felix Ramos.

Appellant Jabiniao, a hollow block maker and a resident of Dao, Gusa, Cagayan de Oro City, denied any involvement or participation in the crime. He claimed that on 26 August 1998, he was in the house of his mother at Mintugsok, Cugman, which is

only five meters away from the house of his brother, Rolando Jabiniao. He was sick at that time and was attended to by his mother. The next day, on 27 August 1998, he and a certain Eusebio Riyas removed corn from the kernel at around 1:00 a.m. On 14 September 1998, while he was again removing corn from the kernel, he heard three warning gunshots and was surprised to be arrested by the police in the presence of his brother, Rolando Jabiniao. Appellant Jabiniao claims that complainant Maria Divina was just coached by the police officers when the latter pointed to him as the assailant. This time around, he denied possession of a bonnet and a firearm.

Leonardo Gacang, a *tuba* gatherer, farmer and *hilot*, claims that on 26 August 1998, Toribio Jabiniao, Sr., the father of appellant Jabiniao, fetched and brought him to Mintugsok, Cugman, to heal appellant Jabiniao, who was having stomachache. He observed that appellant Jabiniao could not stand because of his illness. Gacang administered *hilot* on appellant Jabiniao and gave the latter a concoction extracted from boiled young leaves of guava, *santol* and *kaimito* for him to drink. He left the house at around 4:00 p.m.

Felix Ramos, former neighbor of appellant Jabiniao, testified that on 26 August 1998, at around 9:00 a.m., he went to his farm in Mintugsok, Cugman. That afternoon, he went to the nearby house of Rolando Jabiniao to ask for water. When he was inside, he saw appellant lying flat on the floor, pressing a pillow to his stomach. A few minutes later, Toribio Jabiniao, Sr. arrived. Felix left the house when Gacang started to administer *hilot* to appellant Jabiniao.

On 19 April 2000, the trial court found appellant Jabiniao guilty beyond reasonable doubt of the crime of Robbery with Homicide and imposed upon him the death penalty:

IN LIGHT OF THE FOREGOING consideration[s], judgment is hereby rendered finding the accused Toribio Jabiniao, Jr. guilty beyond reasonable doubt as charged of the crime of Robbery with Homicide as principal by direct participation and in conspiracy with John Doe with the following aggravating circumstances of evident premeditation and taking advantage of superior strength with the following aggravating circumstances:

- a.) use of unlicensed firearm;
- b.) the crime be committed in the dwelling of the victims;
- c.) night time purposely sought;
- d.) the crime be committed with treachery;

and sentences the accused Toribio Jabiniao, Jr. to death by lethal injection and to indemnify the offended party the sum of Seventy-Five Thousand Pesos (P75,000.00) and to pay moral damages to the offended party, the sum of Seventy-Five Thousand Pesos (P75,000.00) and to pay actual damages of Two Thousand Pesos (P2,000.00) and Twelve Thousand Pesos for funeral expenses and temperate damages for wake and 9 days prayer in the sum of Six Thousand Pesos (P6,000.00) and to pay the cost.

The accused is however entitled to be credited in the service of his

sentence consisting of deprivation of his liberty with the full time during which he has undergone preventive imprisonment.^[6]

The trial court found the testimonies of the prosecution witnesses credible, particularly the clear and positive identification of appellant Jabiniao by Maria Divina. In so doing, the trial court considered the account of Maria Divina of the open electric light, the removal of the bonnet, and the "mashing" of her thighs by appellant Jabiniao to be credible and trustworthy. The trial court likewise rejected Jabiniao's alibi that he was ill and was in his brother Rolando's house. Said defense was belied by Rolando himself who testified otherwise.

Appellant Jabiniao appealed the Decision of the trial court to the Court of Appeals. On 19 July 2006, the Court of Appeals affirmed with modification the findings of the trial court, to wit:

WHEREFORE, premises considered, the assailed Decision dated April 19, 2000 of the Regional Trial Court, Branch 25, Cagayan de Oro City is hereby AFFIRMED with MODIFICATION to the effect that appellant is found guilty beyond reasonable doubt of the crime of Robbery with Homicide and is sentenced to suffer the imprisonment of *reclusion perpetua* in lieu of the death penalty pursuant to Section 2(a) of R.A. 9346. Appellant is hereby directed to pay the heirs of the victim P75,000.00 as civil indemnity, P50,000.00 as moral damages, P14,000.00 as actual damages, P25,000.00 as exemplary damages and P6,000.00 as temperate damages.^[7]

Appellant Jabiniao filed the present appeal, submitting the same Brief and Assignment of Errors it had presented before the Court of Appeals. His Assignment of Errors reads:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

GRANTING THAT THE ACCUSED-APPELLANT IS GUILTY, THE COURT A QUO GRAVELY ERRED IN CONVICTING HIM FOR THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE SINCE THE CRIMES COMMITTED ARE TWO SEPARATE CRIMES OF SIMPLE ROBBERY AND HOMICIDE WHICH WILL ENTITLE HIM TO THE IMPOSITION OF TWO DIVISIBLE PENALTIES FOR EACH OF THE TWO FELONIES CORRESPONDINGLY.^[8]

Whether the guilt of appellant Jabiniao was proved beyond reasonable doubt

In asserting that his guilt has not been proven beyond reasonable doubt, appellant Jabiniao claims the contention of Maria Divina that the perpetrator removed his mask when he was searching the cabinet of the victim was tainted with falsehood, arguing that a robber who intended to hide his face would not conveniently remove his mask to reveal his identity. Appellant Jabiniao likewise points to the portion in